IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

SECOND APPEAL NO. 304 OF 2005

Smt. Sakhubai R. Khul & Ors. ..Appellants

versus

Vasagade Nagari Sahakari Pat

Sanstha Ltd. Vasagade ..Respondents

Mr. Amit B. Borkar for the Appellants.

Mr. V. B. Rajure for the Respondents.

CORAM : D. G. DESHPANDE,J.

DATE : 25TH AUGUST, 2005

ORAL ORDER. :

1. Heard Advocate for the appellants and the respondents.

2. Plaintiffs Vasagade Nagari Sahakari Pat Sanstha Ltd. filed a suit for injunction based on title. Property originally belonged to one Akkubai. She sold it to Anna and the plaintiffs society purchased it from Anna. The contention of the appellants was that the plaintiffs did not produce the sale deed between Akkubai and Anna and remain contented by relying upon certified copy of Index

II. This according to the appellants is not proper proof and therefore both the courts committed error in giving finding of a title and possession in favour of the respondents.

3. It may be that the plaintiffs should have produced best evidence on record in the form of Sale Deed between Akkubai and Anna but when plaintiffs filed a certified copy of the Index II coupled with their document of title executed in their favour by Anna then the chain of events was completed. Both the courts rightly held that possession of the plaintiffs was referable to the valid title.

4. So far as possession is concerned, the trial court itself noted that the plaintiffs - respondents have constructed multistoried building in RCC and therefore they were entitled to the reliefs claimed. There is therefore no merit in this appeal nor any substantial question of law is involved.

5. Counsel for the appellants however urged that right of the appellants to challenge the title should be kept open and the present judgment should not come in their way. I do not find that this can be done by the court now, particularly when specific issue in that regard was framed by the trial court and the issue was whether the plaintiffs proves

their possession of the suit property referable to the valid title on the date of the suit. It will be clear from this issue that title of the plaintiffs was very much in dispute, that was challenged by the defendants and the defendants lost and the plaintiffs succeeded. Therefore nothing can be done. Appeal is dismissed.

25.8.2005 (D.G. DESHPANDE, J.)